IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1042 OF 2007

The State of Maharashtra,)
(Through Special Land Acquisition Officer,)
Draught No.1, Nashik))...Appellant

versus

1. Smt. Laxmibai Punja Govardhane)
2. Keru Punja Govardhane)
3. Bhika Punja Govardhane)
4. Kashinath Punja Govardhane)
All R/o Sanjegaon, Tal. Igatpuri, Dist. Nashik)...Respondents
(Orig. Claimants)

WITH
FIRST APPEAL NOS. 1043 TO 1071 OF 2007
WITH
FIRST APPEAL NOS. 2734 TO 2758 OF 2006

WITH
CIVIL APPLICATION NOS. 5214 TO 5243 OF 2007
AND
CIVIL APPLICATION NOS. 1880 TO 1909 OF 2007
IN
FIRST APPEAL NOS. 1042 TO 1071 OF 2007

WITH
CIVIL APPLICATION NOS. 5244 TO 5268 OF 2007
AND
CIVIL APPLICATION NOS. 4636 TO 4660 OF 2007
IN
FIRST APPEAL NOS. 2734 TO 2758 OF 2006

Mr. K.K. Tated, Assistant Government Pleader, for the appellants in FA Nos. 1042 to 1056 of 2007 & 2734 to 2743 of 2006.
Smt. G.P. Mulekar, Assistant Government Pleader, for the appellants in FA Nos. 1057 1061 of 2007.
Mr. B.H. Mehta, Assistant Government Pleader, for the appellants in FA Nos. 1062 to 1066 of 2007.
Mr. Y.M. Nakhwa, Assistant Government Pleader, for the appellants in FA Nos. 1067 to 1071 of 2007 & 2753 to 2758 of 2006.
Mr. A.R. Patil, Assistant Government Pleader, for the appellants in FA Nos. 2744 to 2748 of 2006.
Mr. S.R. Borulkar, Assistant Government Pleader, for the appellants in FA Nos. 2749 to 2752 of 2006.
Mr. K.B. Sonwalkar for the Applicants, The Godawari Marathwadi Irrigation Development Corporation, in (i) Civil Application Nos. 5214 to 5243 of 2007 in F.A. Nos. 1042 to 1071 of 2007, and (ii) Civil Application Nos. 5244 to 5268 of 2007 in F.A. Nos. 2734 to 2758 of 2007.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : October 22 , 2007
Judgment delivered on: October 26, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

1. By this judgment, we will dispose of the above 55 Appeals. A set of 30 appeals has been preferred against the judgment and award of the Reference Court dated 3rd April, 2006, while the remaining 25 appeals have been preferred against the judgment and award of the Reference Court dated 10th April, 2006. As common question of law and fact falls for consideration in these appeals, they can be disposed

of conveniently by a common judgment.

2. The Government issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") proposing to acquire the lands from village Sanjegaon, Tal. Igatpuri, Dist. Nashik. The land was acquired for a public purpose viz. Mukne Dam Project. All the appeals thus relate to the same notification issued under Section 4 of the Act.

3. In furtherance to this notification, two different declarations under section 6 of the Act were issued on 10th June, 1994 and 16th June, 1994 respectively. By a common award dated 14th December, 1995, the Special Land Acquisition Officer (SLAO) awarded compensation to the claimants ranging from Rs. 40,000/- to Rs. 1,10,000/- per hectare, while classifying the lands into different categories.

4. Being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer, on 14th December, 1995, the claimants preferred References under Section 18 of the Act which were filed by them on 6th April and 6th July, 1996, respectively. The Reference

Court, after considering the oral and documentary evidence, enhanced the compensation payable to the claimants for acquisition of their lands at the rate of Rs. 1,69,231/- per hectare for jirayat land and Rs. 84,616/- per hectare for potkharab land.

5. According to the claimants, they were still entitled to higher amount of compensation as the value of the land depending on its location and potential utility was much in excess of the awarded compensation. The claimants examined themselves and also tendered in evidence 7/12 extracts being Exhibits 20 to 48 and sale deeds at Exhibits 15, 17, 52, 53 and 54. While relying upon Exhibit 15 and giving 10 per cent increase, the Reference Court had awarded the above compensation to the claimants.

6. The claimants did not challenge the judgment and award of the Reference Court but the State felt that the compensation awarded to the claimants was much on the higher side which was not supported by appropriate evidence. Resultantly, the State has preferred all the above appeals against the judgment and award of the Reference Court dated 3rd April and 10th April, 2006, respectively.

7. At the very outset we may notice that Civil Application Nos. 5214 to 5243 of 2007 in First Appeal Nos. 1042 to 1071 of 2007 and Civil Application Nos. 5244 to 5268 of 2007 in First Appeal Nos. 2734 to 2758 of 2006 have been filed by M/s. Godawari Marathwada Irrigation Development Corporation, submitting that they are necessary parties and ought to have been impleaded before the Reference Court. However, they were not impleaded by the parties to the Reference nor the Corporation itself took steps to be impleaded before the Reference Court. In the light of the judgments of the Supreme Court in the case of *Abdul Rasak* vs. *Kerala Water Authority*, 2002 (3) SCC 228, they are necessary party and can even be impleaded at the appellate stage. The learned counsel appearing on behalf of the applicant-Corporation stated that they did not wish to pray for remand of the cases for fresh trial before the Reference Court but would argue the case on the basis of the evidence led by the parties i.e. the State Government and the Claimants before the Reference Court. In view of the statement made on behalf of the Applicant-Corporation, non-applicants did not even file replies nor they had any objection to the impleadment of the applicant as party respondent in the present appeals. Even in the application it has been

stated that they only wish to support the case of the State and would adopt the pleadings and contentions placed by the State in the present appeals. Resultantly, all the applications viz. Civil Application Nos. 5214 to 5243 of 2007 in First Appeal Nos. 1042 to 1071 of 2007 and Civil Application Nos. 5244 to 5268 of 2007 in First Appeal Nos. 2734 to 2758 of 2006 are allowed and the applicant, the Godawari Marathwada Irrigation Development Corporation, had been permitted to be impleaded as party respondent. In fact, the learned counsel appearing on behalf of the Corporation was even permitted to address the Court on the merits of the appeals.

8. Coming to the merits of the case, the learned counsel appearing for the parties fairly state that the entire subject matter in the present appeals is squarely covered on fact and law by a recent judgment of a Division Bench of this Court in the case of *The State of Maharashtra* vs. *Smt. Fulyabai Kisan Govardhane* (First Appeal No. 1171 of 2007 and others). That judgment relates to the same notification dated 2nd February, 1994 issued under Section 4 of the Act where the land was acquired from the revenue estate of the same village for the same project. By and large, the same evidence was dealt

with by the Reference Court even in its judgment and award dated 31st March, 2006, which was subject matter of those appeals and the appeals which were preferred by the State have been partially allowed. The Court had granted, by a detailed judgment dated 23rd August, 2007, lesser compensation to the claimants. It may be appropriate to reproduce the relief granted in those appeals to the claimants in those appeals.

> "In view of the above discussion, while allowing the appeals of the State partially, we hold and award the following compensation to the Claimants depending upon the nature of the lands which they own:

Jirayat land: Compensation payable in terms of Exhibit 42 Rs. 1,15,385/- per hectare plus Rs. 53,846/- (10 per cent annual increase on this value for the intervening period 4-7-1989 to 2-2-1994) = Rs. 1,69,231/- minus Rs. 42,307/- (25 per cent aggregate deduction for small piece of land). Thus the total comes to Rs. 1,26,924 per hectare for Jirayat land.

Bagayat land: Rs. 1,26,924/- (market value of Jirayat land) plus Rs. 31,731/- (25 per cent of market value of Jirayat land) = Rs. 1,58,655/- . Thus the total market value for Bagayat land comes to Rs. 1,58,655/- per hectare.

Pot kharab land Rs. 1,26,924/- (market value of Jirayat land) minus Rs. 19,038/- (15% market value of jirayat land) =Rs. 1,07,886/-. Thus, market value of Pot Kharab land is Rs. 1,07,886/- per hectare.

Claimants would also be entitled to statutory benefits of

Section 23 (2) and 23 (1A) of the Act. The claimants shall also be entitled to interest on the enhanced amount in terms of Section 28 of the Act."

9. The said judgment of the Division Bench in the case of Smt. Fulyabai Kisan Govardhane (supra) is squarely applicable on fact and law to the present cases which relate to the same land under the same notification. These appeals filed by the State are also partially allowed and the liability of the State to pay the compensation shall be in the above terms. In the facts and circumstances of the case, we leave the parties to bear their own costs.

14. In view of the disposal of the main appeals filed by the State, no orders on the Civil Application Nos. (i) 1880 to 1909 of 2007 in First Appeal Nos. 1042 to 1071 of 2007, and (ii) 4636 to 4660 of 2006 in First Appeal Nos. 2734 to 2758 of 2006 taken out by the State and the same are accordingly disposed of. Rule in all the Civil Applications is discharged.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.